

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

DAVID FIACCO

Plaintiff,

V.

Docket No. 1:05-cv-145-GZS

SIGMA ALPHA EPSILON FRATERNITY

Defendant.

ORDER REQUESTING ADDITIONAL BRIEFING

Before the Court is Defendant Sigma Alpha Epsilon's Motion for Summary Judgment (Docket # 54) and Plaintiff David Fiacco's Response (Docket # 71). Having considered the parties' briefs, the Court concludes that additional briefing is necessary.

The Court ORDERS that the parties submit additional briefs on the issue of whether the First Amendment precludes Plaintiff's recovery on the claim of intentional infliction of emotional distress. See Hustler Magazine v. Falwell, 485 U.S. 46, 50 (1988); see also Veilleux v. National Broadcasting Company, 206 F.3d 92, 126-29 (1st Cir. 2000) (discussing whether the First Amendment and Hustler Magazine preclude recovery on state claims of misrepresentation). These briefs shall also address the question of whether Plaintiff Fiacco is a public official or public figure, see, e.g., Rosenblatt v. Baer, 383 U.S. 75 (1966) (discussing the limitations of the "public official" determination in the context of defamation), as well as whether the record creates a triable issue with respect to actual malice. See, e.g., Tucci v. Guy Gannett Publ'g Co., 464 A.2d 161 (Me. 1983) (discussing whether the actual malice standard was satisfied by "clear and convincing evidence" on a motion for summary judgment in a case asserting defamation).

Defendant shall file the requisite additional brief on or before February 7, 2007. Plaintiff shall file a response on or before February 26, 2007. Any reply brief by Defendant shall be filed on or before March 7, 2007. Oral argument will be set following

the Court's receipt of the additional briefs. The parties are instructed to include additional statements of material fact in compliance with Local Rule 56 to the extent that such statements are necessary to support the additional briefing.

SO ORDERED.

/s/ George Z. Singal
Chief United States District Judge

Dated at Portland, Maine, this 19th day of January, 2007.